

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 18-42 are presently active in this case. The present Amendment amends Claims 18-30, 32 and 36-38; cancels Claim 17 and adds Claims 41-42.

The outstanding Office Action rejected Claims 30-31 under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 17-40 were rejected under 35 U.S.C. § 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Perlman et al. (U.S. Patent No. 4,526,752), Krumhar et al. (U.S. Patent No. 5,096,813) or Kurrle (U.S. Patent No. 6,214,766).

In order to vary the scope of protection recited in the claims, new dependent Claims 41-42 are added. New Claims 41-42 find non-limiting support in the disclosure as originally filed, for example at page 8, lines 12-18 with corresponding Fig. 2. Therefore, the changes to the claims are not believed to raise a question of new matter.¹

In response to the rejection under 35 U.S.C. § 112, second paragraph, Claim 30 is further amended to clarify that the counterpart authentication element is claimed. In fact, Claim 30 was originally drafted as a kit claim in order to clearly require the authentication element and the counterpart authentication element, which were both positively recited in the body of Claim 30:

- A kit separately comprising:
 - i) a packaging device comprising,
 - ...
 - at least one authentication element ...; and
 - ii) *said counterpart authentication* element...

¹ See MPEP 2163.06 stating that "information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter."

In any event, Claim 30 is further amended in an effort to remove all uncertainty regarding this point. Amended Claim 30 now requires:

- A kit comprising:
 - i) a packaging device comprising,
...
 - at least one authentication element ...; and
 - ii) *a strip supporting said counterpart authentication element ...*

In view of amended Claim 30, it is believed that all pending claims are definite and no further rejection on that basis is anticipated. If, however, the Examiner disagrees and has some other suggestions on how to further improve Claim 30, *the Examiner is invited to telephone the undersigned who will be happy to work with the Examiner in a joint effort to derive mutually acceptable language.*

In response to the rejections of the claims under 35 U.S.C. § 102(b) and 35 U.S.C. §103(a), and in light of the present Amendment, Applicant respectfully requests reconsideration of these rejections and traverses the rejections, as discussed next.

Claim 17 is now canceled and Claims 18-29 and 36-38 are amended to depend from kit Claim 30, such that the only remaining claims are the kit Claims 18-31 and 36-42 and the process Claims 32-35. As noted in the Office Action, the distinction between claiming the counterpart authentication element and not claiming it "is important." The rejections over the prior art were based on the assertion that the counterpart authentication "element is not positively claimed in the claim," and that "a room having oxygen therein in which the container of Krumhar is opened could be the counterpart authentication element, although as already noted, the claim does not require such an element, only the capability of reacting with such an element." See page 4 of the final Office Action. Kit Claim 30 was rejected on the same ground since it appeared "to have the same scope as independent claim 17, save for the requirement that the composition of the second reagent be chromogenic, in spite of the use of the term kit in line 1 thereof." Thus, the present Amendment is believed to overcome the

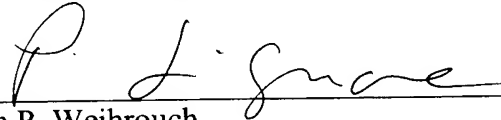
final rejection. Specifically, Claim 17 is canceled, and Claim 30 is amended to positively recite the counterpart authentication element. Further, Claim 30 requires ***a strip that supports the counterpart authentication element***, such that the oxygen in a room does not meet such a limitation.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 18-42 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

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